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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,047	09/29/2003	John A. Kapeles	A0693.10U	2575

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EXAMINER

LOFDAHL, JORDAN M

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,047

Applicant(s)

KAPELES ET AL.

Examiner

Jordan Lofdahl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/29/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 recites the limitation "^{projectile}said base". There is insufficient antecedent basis for this limitation in the claim. TL

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-10, 12-14, 16-23, 25-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luxton (5035183) and further in view of Royer (3732821)

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As to claim 1, Luxton discloses a projectile nose (4) joined to a projectile base (end of cylindrical wall (3)) said nose comprised of a frangible, rigid polymer (polyethylene). Not disclosed is a polymer foam. Royer, however, discloses a foamed polymeric material (10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the polymer of Luxton with the polymer of Royer, to reduce the lethal potential of the device.

As to claims 3, 16 and 29 disclosed is a density between approximately 8 and 14 pounds per cubic foot ('821, col. 3, lines 15).

As to claims 4 and 17, disclosed is a cavity (fig. 1).

As to claims 5 and 18, disclosed is a payload ('183, col. 3, lines 49-53) that is inherently dispersed laterally upon impact.

As to claims 6, 8, 19, 21 and 30 disclosed is a powder.

As to claims 7, 9, 20 and 22, disclosed is a rear plug (5); joined to a cylindrical wall (3) to create a nose cavity.

As to claims 10 and 23, disclosed is polyurethane ('821, col. 3, line 14).

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As to claims 12 and 25, disclosed is a forward wall joined to a cylindrical wall (fig. 1).

As to claims 13 and 26, disclosed is a forward and cylindrical wall and a rear plug (fig. 1).

As to claim 14, Luxton discloses a projectile (fig. 2 and 3) comprising a nose (4) and a projectile body (read as the end section of cylindrical wall (3)) said projectile separably joined to a propulsion shell (2) comprising a propulsion means (propellant gasses) said nose comprised of a frangible, rigid polymer (polyethylene). Not disclosed is a polymer foam. Royer, however, discloses a foamed polymeric material (10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the polymer of Luxton with the polymer of Royer, to reduce the lethal potential of the device.

As to claim 27, Luxton discloses a projectile (fig. 2 and 3) comprising a nose (4) and a projectile body (read as the end section of cylindrical wall (3)) said projectile separably joined to a propulsion shell (2) comprising a propulsion means (propellant gasses) said nose comprised of a frangible, rigid polymer (polyethylene); a payload ('183, col. 3, lines 49-53) that is inherently dispersed laterally upon impact. Not disclosed is a polymer foam. Royer, however, discloses a foamed polymeric material (10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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comprise the polymer of Luxton with the polymer of Royer, to reduce the lethal potential of the device.

Claims 2, 11, 15, 25, 28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luxton (5035183) in view of Royer (3732821) and further in view of Barr (3865038).

As to claims 2, 15 and 28, disclosed is a rounded forward wall (12) and a cylindrical wall (3). Not disclosed is the cylindrical wall being thinner than the forward wall. Barr, however, discloses a device, comprising a cylindrical wall (25) thinner than the nose (23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device, as modified, with a cylindrical wall thinner than the nose as taught by Barr, to reduce the lethal potential by absorbing more energy upon impact.

As to claims 12 and 24, disclosed is a forward wall joined to a cylindrical wall ('183, fig. 1).

As to claim 31, disclosed is a rear plug (5); joined to a cylindrical wall (3) to create a nose cavity.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml



TERI P. LUU
SUPERVISORY PRIMARY EXAMINER